

BEFORE THE DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF THE APPLICATIONS)	
FOR BENEFICIAL WATER USE PERMIT)	PROPOSAL
74310-s76H BY UNIFIED INDUSTRIES)	FOR
AND 74311-s76H BY CITY OF)	DECISION
PINESDALE)	

* * * * *

Pursuant to Mont. Code Ann. §§ 85-2-121 and 85-2-309 (1991), a hearing was held in the above matter on November 6, 1991, in Missoula, Montana, to determine whether Beneficial Water Use Permits based on the above Applications should be granted to Unified Industries and City of Pinesdale under the criteria in Mont. Code Ann. § 85-2-311(1) and (4) (1991).

APPEARANCES

Applicants appeared at the hearing by and through Ted Doney, attorney at law. Jess Nuttall, Water Resources Manager for Applicants and resident of Pinesdale, appeared as a witness in behalf of Applicants. Ross D. Miller, hydrologist with Land & Water Consulting, Missoula, appeared as witness in behalf of Applicants and was qualified as an expert in groundwater hydrology. Tom Gale, Sheafman Creek Water Commissioner, appeared as witness in behalf of Applicants.

Objectors Raymond and Darlene Gramza appeared at the hearing by and through Darlene Gramza. Objector Kevin T. Horton appeared at the hearing on his own behalf. Objector Miles S. Knutson

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appeared at the hearing on his own behalf. Objectors Leslie B. and Agnes Golden appeared at the hearing on their own behalf.

Mike McLane, Manager, Missoula Water Resources Division Regional Office of the Department of Natural Resources and Conservation (Department), appeared as the Department's spokesperson and staff witness.

Objectors Walter, Leonard, and Ruth Easley, Henry M. and Jeannette E. Winters, Cindy C. Lindskog, Kristy A. Allison, Norman E. Allison, and Ray Lorenz¹ contacted the Hearing Examiner prior to the hearing to request that they be excused from appearing at the hearing. The requests were granted. Objectors Easley, Winters, Allison, Lindskog, Lorenz, and Allison retain their status as parties in this matter.

Objectors Patricia E. and Eleanor G. Moore, Charles K. and Shirley A. Wheat, Charles V. and Rhonda Gividen, John and Donna Bertolero, Dwayne D. and Evelyn V. Klinger, Randy L. and Sharon K. Mathews, Charles I. Hendricks, Pamela B. Gouse, Luverne E. McIlree, Robert J. Halvorson, Robert Takle, James and Dorothy Quinn, Kent and Laura Olson, Charles and Nina Prausa, and Linda Scanlon² failed to appear at the hearing. The record shows a properly constituted Notice of Hearing was properly served on all parties on October 4, 1991, by certified mail, return receipt requested. See Mont. Admin. R. 36.12.204(1) (1984). Return receipts were received by the Department, each with a signature

¹ See Preliminary Matters, below.

² Deceased.

indicating receipt. The Hearing Examiner received no communication from the missing objectors prior to the hearing or subsequent to the close of the record.

The Hearing Examiner ruled at the hearing that all missing objectors were in default. That ruling is hereby confirmed. The defaulted objectors no longer retain the status of parties in this matter. Mont. Admin. R. 36.12.208 (1991). As stated at the hearing, the objection forms filed by the defaulted objectors, and kept in the Department's file on this Application, remain a part of the record.

EXHIBITS

Applicants offered the following five exhibits which were accepted into the record without objection.

Applicants' Exhibit A is a 39-inch by 18-inch map (mounted on foam board) of the Sheafman Creek drainage from the area of the proposed point of diversion downstream to the confluence with Mill Creek. It is an enlargement of a USGS topographic quadrangle map on which locations of features such as ditches, diversion structures, and measurement devices have been drawn.

Applicants' Exhibit B is a 17-inch by 11-inch map (mounted on foam board) that is a further enlargement of the area around the proposed point of diversion with greater detail as to the features.

Applicants' Exhibit C is a bound report compiled by Jess Nuttall entitled "Sheafman Creek Test Data, Pinesdale, Montana, 1987-1991" and dated October 30, 1991.

Applicants' Exhibit D is a bound report prepared by Land & Water Consulting, Inc., entitled "Hydrologic Review, City of Pinesdale Application for Water Rights: Creek Infiltration Gallery" and dated October 31, 1991.

Applicants' Exhibit E is a bound undated report compiled by Tom Gale, Chief Water Commissioner, Fourth Judicial District, entitled "Sheafman Creek Test Data, Pinesdale, Montana 59841, 10/11/90 - 2/9/91."

The Department offered the following exhibit which was accepted into the record without objection.

Department's Exhibit A is fourteen pages comprising a November 1, 1991, memorandum with attachments from Larry Schock, Civil Engineering Specialist III, to Mike McLane, Missoula Regional Office Supervisor, on the subject "Corrected Sheafman Creek Stream Flow Forecasts."

Applicants requested the Hearing Examiner take official notice of the entire record of the proceedings In re Applications 69638-s76H by Unified Industries and 69659-s76H by City of Pinesdale, particularly the elements of the record having to do with beneficial use and the adequacy of the means of diversion. No objections were expressed. This is the record of the contested case proceedings on Applicants' "winter use" Applications which concluded with the issuance of the Department's Final Order on April 4, 1991 (hereafter referred to as "winter use record"). The request was granted. As directed by the Hearing Examiner, Applicants submitted a list on December 2, 1991, of the specific

items in that record which especially pertain to this request for official notice and the issues in the present matter.

The Department requested that the Hearing Examiner take official notice of the files maintained by the Department on three Interim Permits granted to Applicants for conducting tests on the potential effects of the proposed appropriation. The files all have the identification number 69638-s76H. The Department also requested that the Hearing Examiner take official notice of Sections 34, 36, and 37 of the *Water Measurement Manual*, United States Department of the Interior, Bureau of Reclamation, Second Edition, Revised Reprint, 1984. The requests received no objections. The requests were granted.

The Hearing Examiner took official notice of the records maintained by the Department of water rights on Sheafman Creek.

The Department's files on the present Applications (hereafter referred to as "Department's files") were made available to all parties for review prior to the hearing. Without objection, the files were entered into the record in their entirety at the hearing by the Hearing Examiner.

PRELIMINARY MATTERS

Prior to the hearing, the Hearing Examiner was contacted by Ray Lorenz, new owner of the property and water rights which previously belonged to O. M. Lord Investment Co. This is confirmed by the Department's water rights records. Mr. Lorenz explained he recently purchased the property and had not had time to become familiar with the present matter. In addition, he had

an out-of-state commitment on the hearing date. He requested that he be excused from attending the hearing, but be allowed to remain as a party and to file a written statement for the record. The Hearing Examiner granted his request to be excused (see Appearances, above). Opportunity for Objector Lorenz to submit a written statement by November 26, 1991, and for Applicants to submit a written response by December 2, 1992, was granted at the hearing without objection. The statement and the response were both received on time and are included in the record.

FINDINGS OF FACT

1. Unified Industries filed Application for Beneficial Water Use Permit 69638-s76H on October 4, 1988, at 9:00 a.m. City of Pinesdale filed Application for Beneficial Water Use Permit 69659-s76H on October 14, 1988, at 4:28 p.m. (Department's files)

2. Application 69638-s76H proposed to appropriate water at 90 gallons per minute (gpm) up to 36.1 acre-feet (AF) from April 1 through June 30, 40 gpm up to 5.4 AF from July 1 through July 31, and 10 gpm up to 10.7 AF from August 1 through March 31 from an unnamed tributary of Sheafman Creek by means of an infiltration gallery in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28, Township 7 North, Range 21 West, Ravalli County, Montana, referred to as the "north gallery." Water would be stored in a 13,500 gallon storage tank in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 28. The appropriation was proposed for municipal use in the SW $\frac{1}{4}$ of Section 27, the E $\frac{1}{2}$ and NW $\frac{1}{4}$ of Section 28, the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 33, and the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of

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Section 34 all in Township 7 North, Range 21 West, Ravalli County, Montana. (Department's files)

3. Application 69659-s76H proposed to appropriate water at 50 gpm up to 60.7 AF from July 15 through April 15 and 200 gpm up to 79.5 AF from April 16 through July 14 from Sheafman Creek by means of an infiltration gallery in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28, Township 7 North, Range 21 West, Ravalli County, Montana, referred to as the "creek gallery." Water would be stored in a 13,500 gallon storage tank in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 28. The appropriation was proposed for municipal use in the SW $\frac{1}{4}$ of Section 27, the E $\frac{1}{2}$ and NW $\frac{1}{4}$ of Section 28, the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 33, and the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 34 all in Township 7 North, Range 21 West, Ravalli County, Montana. (Department's files)

4. Pertinent portions of both Applications were published in the *Ravalli Republic*, a newspaper of general circulation in the area of the proposed source, on February 22, 1989. Additionally, the Department served notice by first-class mail on individuals and public agencies which the Department determined might be interested in or affected by the application. (Department's files)

5. Timely objections were received on both Applications: 17 on 69638-s76H and 18 on 69659-s76H. In addition, seven untimely objections were filed, these by: James and Dorothy Quinn, Kent and Laura Olson, Charles and Nina Prausa, Robert J. Halvorson, Robert Takle, and Linda Scanlon. Objectors raised the following principal issues on their objection forms.

- Insufficient unappropriated water is available in Sheafman Creek to allow new appropriations, therefore the proposed appropriation would adversely affect the existing water rights on Sheafman Creek.

- The proposed means of diversion is not adequate because it is not capable of regulation and was installed without being monitored.

- Applicants' illegal installation and operation of the diversion works should preclude them from obtaining a permit.

- Applicants' past actions, including the aforementioned, indicate their tendency to operate without regard to restrictions and limits, which is likely to make administration of any permit issued to Applicants impossible. (Department's files)

6. On March 23, 1990, Marvin Jessop, Loren D. Herbert, and Jesse L. Nuttall, as representatives of Applicants, amended their respective applications splitting each into two separate applications primarily by period of use and volume. The periods of use were divided such that two applications are for appropriations limited to "winter use," which retained 69638-s76H and 69659-s76H, and the two others, which were assigned 74310-s76H and 74311-s76H respectively, are limited to "summer use." Beneficial Water Use Permits were granted based on Applications 69638-s76H and 69659-s76H.³ The two "summer use" applications, 74310-s76H

³ See In re Applications 69638-s76H by Unified Industries and 69659-s76H by City of Pinesdale, Final Order, April 4, 1991.

and 74311-s76H, have been consolidated into the present case.
(Winter use record and Department's files)

7. The sources, points and means of diversion, places of storage, places of use, and purpose remain the same on all Applications. The flow rate, volume, and periods of appropriation on Application 74310-s76H (for the north gallery) were amended to be: 90 gpm up to 5.90 AF from June 16 through June 30, 40 gpm up to 5.40 AF from July 1 through July 31, and 10 gpm up to 4.10 AF from August 1 through October 31 for a total volume of 15.40 AF to be appropriated from June 16 through October 31 of each year. The flow rate, volume, and periods of appropriation on Application 74311-s76H (for the creek gallery) were amended to be: 50 gpm up to 30.50 AF from June 16 through October 31 of each year. (Department's files)

8. Notice of the amendments was sent on May 16, 1990, by certified mail to all persons who filed objections against Applications 69638-s76H and 69659-s76H. The notice stated that all objections to said Applications would be considered objections to Applications 74310-s76H and 74311-s76H and all persons who were parties in the original matter would be parties in the present matter. The amendments involved no increases in the elements of the proposed appropriations or increase in the proposed burden on the source. No formal objections to the amendments, *per se*, were received. (Department's files)

9. Objectors remaining as parties in this matter (see Appearances, above) own rights to divert and use water from

Sheafman Creek during the period of appropriation proposed by Applicants, June 16 through October 31 of each year. (Department's water rights records)

10. In uncontradicted statements on their application forms, Applicants state they have possessory interest in the lands on which the proposed appropriation would be put to use. In uncontradicted testimony, Jess Nuttall stated that the City of Pinesdale is an incorporated municipality. The boundaries of the City of Pinesdale encompass the proposed place of use. (Department's files and Applicants' Exhibit 3)

11. Applicants have been experiencing shortages in the supply of water for existing municipal demand and have had to ration water. The Montana Department of Health and Environmental Sciences, Water Quality Bureau, has been pressuring Applicants to improve their municipal water supply system and increase the amount of water available to a minimum of 250 gpm.

Applicants have filed many Statements of Claims to Existing Water Rights in the statewide adjudication of water rights in existence prior to July 1, 1973. Some of these claims are for municipal use from Sheafman Creek or lakes in the upper reaches of the Sheafman Creek drainage through the same water service and distribution system as would be used to distribute the proposed appropriations. The claims have not yet been adjudicated. Regardless of the status of the claims, the Water Quality Bureau and Applicants have stated the city has an actual shortage of dependable water supply. (Winter use record)

12. Applicants' municipal needs are based on the water service requirements of 750 persons residing in 86 homes and eight community-use buildings. These needs exist year round. The standard adopted by the Department for domestic use is one acre-foot per household⁴ plus a minimum of 0.5 AF per dwelling for lawn and garden purposes. Given 86 dwelling units of two households each,⁵ Applicants' municipal needs are greater than 215 AF as this figure does not include the community-use buildings or other functions normally associated with municipal systems such as fire protection. Lawn and garden use alone based on the Department's standard, which would coincide with the proposed period of use, would be 43 AF. The total proposed volume under both "summer use" applications combined is 45.90 AF. (Winter use record, Department's files, and testimony of Jess Nuttall)

13. Applicants installed two infiltration galleries in 1986. The first gallery installed, the "north gallery," lies about 50 feet north of the Sheafman Creek streambed, and is the subject of Application 69638-s76H. It replaced and is located on the site of a collection ring diversion system operated under Certificate of Water Right 4858-g76H for 90 gpm with a priority date of February 18, 1975. The second gallery, the "creek gallery," lies under the Sheafman Creek streambed.

⁴ A household consists of five people, or portion thereof, in a dwelling and one dwelling may contain more than one household.

⁵ 750 divided by 86 equals 8.7 persons, or two households.

Both galleries are from 10 to 15 feet below the land surface. The galleries were designed by Applicants' consultant, Hydrometrics, Consulting Scientists and Engineers, Helena, Montana. Construction of the galleries was done by Pines Construction. The systems were installed prior to Applicants' filing for water right permits, and without prior Department review of the systems' designs or inspection of construction. (Winter use record and Department's files)

14. The north gallery has been operating continuously since its construction, and is diverting the same quantity of water as the prior collection ring system. It diverts water at rates ranging from a high of 90 gpm to a low of 10 gpm. The flows vary within this range in relation to the amount of water flowing in Sheafman Creek.

Applicants contend operation of the north gallery at those levels is fully authorized under Certificate of Water Right 4858-g76H, and that Application 69638-s76H has been filed as an accommodation to other Sheafman Creek water users and the Department. Documents in the Department's file indicate that Application 69638-s76H is intended to pursue authorization to operate the north gallery regardless of whether it diverts surface water, ground water, or a commingling of both. (Winter use record, Department's files, and Department's water rights records)

15. The creek gallery has been operated for municipal purposes and testing since its construction in 1986. It was operated for a little over a year. It was closed by Order of

Judge Brownlee, District Court of the Fourth Judicial District, issued August 10, 1989. The Order states the gallery was being operated "without a 310 permit from the State of Montana and without any water right or permit from the Department of Natural Resources and Conservation." Applicants were reminded in an October 19, 1989, letter from Mike McLane that the gallery must not be operated even after the water commissioner vacates his position for the season. Subsequently, the Department discovered Applicants to be operating the gallery, purportedly for fire protection purposes. (Winter use record)

16. The infiltration gallery diversion system has existing in-line mechanical measurement devices that record the amount of water passing through them. The meters can be used to measure and record the amount of water diverted under the proposed appropriations. The configuration of the piping of the existing gallery system, however, has bypass pipes around the existing in-line water meters. This can allow water to be diverted for use without measurement. Furthermore, the flow rate does fluctuate in the gallery system, or an operator could assert that the system had been out of operation when actually water was being diverted through the bypass around the meters. (Department's files and testimony of Jess Nuttall, Tom Gale, and Mike McLane)

17. Sheafman Creek varies along its length between being a gaining stream and a losing stream. The stream gains flow between the infiltration galleries and the power plant tailrace. Between the boundary of the City of Pinesdale and the bridge on

lower Sheafman Creek Road, the stream loses flow. During periods of low flows, there are reaches of streambed that have no surface flow while areas above and below these reaches do have surface flow. The creek has an "underflow" which is the flow of water through porous materials directly beneath the streambed. The water in a particular reach of underflow may or may not surface later in the creek. However, when surface flow reappears in the creek after a reach of dry creek bed, the water has come from subsurface flows. In the opinion of persons familiar with the day to day characteristics of stream flows in Sheafman Creek, there is a direct relationship between surface flow and underflow, and that less water in the underflow means less water in surface flows. (Winter use record, Applicants' Exhibit D, and testimony of Darlene Gramza, Kevin Horton, Tom Gale, and Ross Miller)

18. Pursuant to an Interim Permit issued October 9, 1990, Applicants operated the creek gallery for testing purposes from October 11 through December 31, 1990. The purpose of the test was to attempt to determine whether operating the creek gallery would affect stream flow in Sheafman Creek, especially as relevant to any adverse effect on senior appropriators and on water availability.

Applicants also operated the creek gallery from January 1 through February 2, 1991, pursuant to an emergency appropriation under Mont. Code Ann. § 85-2-113(3) (1989), and Mont. Admin. R. 36.12.105 (1989). Data was also collected during this emergency

appropriation. (Applicants' Exhibits C and D and testimony of Jess Nuttall)

19. Procedures for the test and the methods of data collection were reviewed by professionals and experts in the field of hydrology and were found to be adequate and sufficiently correct to address the purpose of the test. Parshall flumes were used to collect data on the relationship between flows at various points on Sheafman Creek. The flumes were modified in a manner that was uniform between flumes. The throat of each flume was narrowed to facilitate reading low level flows. This modification probably made each flume incapable of accurately measuring the flow rate passing through. Even with the modifications, however, the flumes were adequate for indicating the relationship between flows at the different data points over time, which was the intent and purpose of the study. (Applicants' Exhibit D, *Water Measurement Manual*, and testimony of Jess Nuttall, Ross Miller, Tom Gale, and Mike McLane)

20. The creek gallery is pulling water in from two sources: leakage from the surface flows in Sheafman Creek into the underlying strata, and the underflow of the Sheafman Creek drainage. When the stream was being diverted through the power plant so that virtually no surface water was flowing above the creek gallery, the gallery was diverting only about five gpm of surface water because that was all that was there. The tests showed that the gallery was obtaining the substantial amount of its water

from subsurface sources. (Applicants' Exhibits C and D and testimony of Ross Miller)

21. The tests showed that when the creek gallery was diverting at fifty gpm, the effect on surface flows at the Burke Ditch and below on the creek were too small to measure. Based on the data available, it is the opinion of Ross Miller that operation of the creek gallery at a rate of fifty gpm could not have a measurable effect at or downstream from the Pinesdale city limits all the way to the confluence with Mill Creek.⁶ It is also Ross Miller's expert opinion that the hydrologic system of Sheafman Creek, including the interactions of underflows, groundwater contributions, and surface flows, remains the same year round, therefore the nature of the effect that operation of the creek gallery will have on flows in this system will be similar during the proposed period of use to what it was during the testing period. The only difference will be the amount of water moving through the Sheafman Creek system, and the effects will still be immeasurable. (Applicants' Exhibits C and D and testimony of Jess Nuttall, Ross Miller, and Tom Gale)

22. The analysis conducted by Ross Miller resulted in the opinion that operation of the creek gallery would cause no

⁶ There was some disagreement over what Ross Miller stated as his opinion. In his report and repeatedly throughout his testimony he stated the opinion given in this Finding of Fact. Under cross examination by Kevin Horton, he stated the effect operating the creek gallery may have on lower Sheafman Creek diversions could not be known with certainty without substantially more data gathered through very expensive testing. The opinion of this expert witness was stated and repeated with a consistency and assurance that manifested professional certainty.

measurable effect on down-gradient water wells. It is his opinion that there would not be a measurable decline in the water level in any of the wells in the Sheafman Creek drainage as a result of operation of the creek gallery at a rate of fifty gpm. (Applicants' Exhibit D and testimony of Ross Miller)

23. There is no evidence in the record that the water in underground source(s) being diverted by means of wells in the vicinity of the creek gallery has been fully appropriated.

24. One of the data collection points used in the tests is on Sheafman Creek downstream of where water from Cow Creek is added to Sheafman Creek. The testing did not include monitoring the contributions from Cow Creek and analysis of their effects on the results of the test. It is estimated that not more than half, but possibly something approaching half, of the flow at the lowest data point was Cow Creek water. (Testimony of Kevin Horton, Jess Nuttall, and Tom Gale)

25. Between the two lowest data collection points used in the tests there are pumps that divert water from Sheafman Creek. The pumps have mechanisms that automatically shut them off when water in the creek is below a certain level. These pumps often shut off at night and must be manually restarted in the morning. Data during the tests was usually collected around eight in the morning, which was before the pumps were restarted in some instances. The data collected for the tests did not include monitoring the amount being pumped at these diversions, or the

times of operation of the pumps. (Testimony of Kevin Horton, Jess Nuttall, and Tom Gale)

26. The amount of water Applicants propose to appropriate does flow at the proposed points of diversion during the proposed period of use. Stream flow analysis performed by the Department indicates that flows in Sheafman Creek exceed the proposed flow rate. The estimates indicate average stream flows of between approximately 46.59 cubic feet per second (cfs) and 3.57 cfs during the proposed period of use.

Flow measurements taken by the water commissioner and by Jess Nuttall indicate flows in excess of the proposed appropriation at the power plant diversion. Jess Nuttall's measurements show between approximately 15 cfs and 0.94 cfs during the proposed period of use. Tom Gale's measurements show between approximately 4.65 cfs and 1.82 cfs during a period of July 15 through August 15, which is within the proposed period of use. (Winter use record, Department's Exhibit A, Applicants' Exhibits C, D, and E, and testimony of Ross Miller)

27. The total combined flow rate of the first and second decreed rights to water from Sheafman Creek is 7 cfs. There is not enough flow in Sheafman Creek to satisfy these two rights after July 25th through the remainder of the irrigation season, including all of October. The second right users adopt a daily rotation system of water use in mid-July. Albeit outside their claimed period of use, Gramzas have attempted to divert their first right allotment in October, which is ten miner's inches or

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112.2 gpm, and have found flows in the creek could not satisfy it. (Applicants' Exhibit C and testimony of Jess Nuttall, Tom Gale, and Darlene Gramza)

28. Twenty-one water rights were decreed on Sheafman Creek in Ainsworth v. Buckridge, Fourth Judicial District, Case 1620 (1913). The total amount decreed to all twenty-one water rights is 2140 miner's inches or 53.5 cfs. The three stream flow analyses performed by Larry Schock indicate that only in June would stream flows satisfy all decreed water rights. (Department's water rights records and Department's Exhibit A)

29. The sum of the flow rates of all rights to water from Sheafman Creek and Sheafman Lakes on record with the Department is approximately 170 cfs. This figure, however, contains non-consumptive rights and rights with multiple uses. If these redundant and nonconsumptive flows are factored out, the net sum of all rights to consumptive use of water from Sheafman Creek and Sheafman Lakes is approximately 111 cfs. (Department's water rights records)

30. A court-appointed water commissioner has been assigned to regulate the distribution of Sheafman Creek water during times of shortage. The water commissioner usually does not begin distributing Sheafman Creek water earlier than June, and ceases distributing Sheafman Creek water around the first of October. The commissioner usually begins distributing water in July. At the time that he usually begins, the stream flow is already unable to satisfy the eighth decreed right on the stream. When

the commissioner began taking measurements in 1990, which was on July 17, flows in Sheafman Creek were already 122 miner's inches less than is necessary to satisfy the fifth right, let alone the eighth or twenty-first. It is the opinion of the water commissioner that after the runoff of snow-melt, there is no water available for appropriation in Sheafman Creek during the irrigation season which lasts through October. Runoff from snow-melt is complete by the end of June. (Winter use record, Department's Exhibit A, and testimony of Tom Gale and Darlene Gramza)

31. More water flows in Sheafman Creek at the downstream crossing of the Pinesdale city limits when it has flowed through the closed power plant diversion and conveyance system than when the water flows to this point down the natural streambed. This was determined based on the data of Applicants' testing in the fall and winter of 1990-1991. The power plant diversion and conveyance system was completed, and apparently first operated, in 1982. (Department's water rights records and testimony of Jess Nuttall, Ross Miller, and Tom Gale)

32. The streambed of Sheafman Creek was disturbed between the power plant diversion and the power plant tailrace when the creek gallery was constructed in 1986. This disturbance may have altered the flow characteristics of this reach of stream. Although more water is available below the power plant tailrace when the creek is diverted through the power plant system than when the creek flows down its natural streambed, the streambed disturbance and alteration resulting from installation of the

infiltration galleries may have caused increased leakage of surface flows into the streambed in addition to what occurred naturally prior to the disturbance. (Winter use record and testimony of Jess Nuttall and Ross Miller)

33. Use of the north gallery is likely to be very similar to the use of the creek gallery with respect to effects on the hydrologic system in the Sheafman Creek drainage. They are both taking water from the same subsurface source. The north gallery does, however, divert surface water. The amount of water collected by the north gallery fluctuates in relation to the flows in Sheafman Creek and chemical analysis of the water collected by the north gallery shows it contains Sheafman Creek water. (Winter use record and testimony of Ross Miller)

34. Only two permits have been issued for planned uses or developments for water from Sheafman Creek where the Department has not been notified that the projects have been completed. These are P69638-s76H issued to Unified Industries and P69659-s76H issued to City of Pinesdale. These permits are for periods of use outside the periods of use of Applicants' proposed appropriation. There are no reservations of Sheafman Creek water, or of water in the mainstem sources of the major drainage basin to which the proposed sources are tributary. (Department's water rights records)

35. Objectors expressed widespread concern about enforcement of the limitations of any permit issued to Applicants, contending that Applicants have acted in the past without regard

to the rights of prior appropriators or the water right regime on Sheafman Creek. (Winter use record and Department's files)

36. Applicants agreed to a condition requiring administration of the proposed appropriation by the court-appointed water commissioner along with the other rights in the Sheafman Creek water rights regime. Loren D. Herbert, on behalf of Unified Industries, agreed on January 30, 1989, to placing the condition on Application 69638-s76H. Marvin M. Jessop, agent of Unified Industries acting on behalf of City of Pinesdale, agreed on January 30, 1989, to placing the condition on Application 69659-s76H. All aspects of Applications 69638 and 69659 were applied to Applications 74310 and 74311 except as specified on the amendment forms. The amendments did not exclude this condition. (Winter use record and Department's files)

CONCLUSIONS OF LAW

1. The Department has jurisdiction over the subject matter herein, and the parties hereto. Mont. Code Ann. Title 85, Chapter 2 (1989).

2. The Department gave proper notice of the hearing, and all relative substantive and procedural requirements of law or rule have been fulfilled; therefore, the matter is properly before the Hearing Examiner. See Mont. Code Ann. §§ 85-2-302, 306, 307, 308, and 309 (1989); Findings of Fact 1 through 9.

3. The Department must issue a Beneficial Water Use Permit if the applicant proves by substantial credible evidence that the criteria in effect at the time of the application, being Mont.

Code Ann. § 85-2-311(1) (1989) in regard to these amended Applications, are met:

(a) there are unappropriated waters in the source of supply at the proposed point of diversion:

(i) at times when the water can be put to the use proposed by the applicant;

(ii) in the amount the applicant seeks to appropriate; and

(iii) during the period in which the applicant seeks to appropriate, the amount requested is reasonably available;

(b) the water rights of a prior appropriator will not be adversely affected;

(c) the proposed means of diversion, construction, and operation of the appropriation works are adequate;

(d) the proposed use of water is a beneficial use;

(e) the proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved; and

(f) the applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.

4. To meet the substantial credible evidence standard in Mont. Code Ann. § 85-2-311(1) (1989) the applicant must submit independent hydrologic or other evidence, including water supply data, field reports, and other information developed by the Department, the U.S. Geological Survey, or the U.S. Soil Conservation Service and other specific field studies, demonstrating that the criteria are met. Mont. Code Ann. § 85-2-311(4) (1989).

5. After July 1, 1973, a person may not appropriate water except by applying for and receiving a permit from the Department. Mont. Code Ann. §§ 85-2-301(1) and 302 (1989). Applicants diverted water from the proposed source and for the proposed

purpose prior to filling an application or receiving a permit to do so. See Findings of Fact 1, 13, 14, and 15.⁷

Although diverting water without a permit is a misdemeanor and criminal sanctions may apply, the penalties authorized do not include denial of a permit. Mont. Code Ann. §§ 85-2-122 and 46-18-212 (1989). The Department has no statutory authority to deny a permit on such grounds. See In re Application 52031-s76H by Frost. Furthermore, whether the diversion works were first operated "illegally" is not relevant to how data from that operation serves to satisfy the criteria for issuance of a permit. See In re Application 61978-s76LJ by Town.

6. The proposed use of water, municipal, is a beneficial use. Mont Code Ann. § 85-2-102(2)(a) (1989). Applicants have provided substantial credible evidence that the use of the water will benefit them. See Findings of Fact 10, 11, and 12. The amounts of water proposed for appropriation are within the guidelines identified by regulating agencies. See Findings of Fact 7, 11, and 12. Therefore, the criterion in Mont. Code Ann. § 85-2-311(d) (1989) has been met.

The several water rights Applicants own for municipal use must not be combined to appropriate more water than can be beneficially used. Mont. Code Ann. § 85-2-301(1) (1989). Therefore, this permit must identify this limitation on the supplemental nature of Applicants' municipal water rights. See Mont. Code Ann. § 85-2-312(1) (1989).

⁷ Note Applicants' contention in Finding of Fact 14.

7. Applicants proved by substantial credible evidence they have possessory interest in the property where the water is to be put to beneficial use. See Findings of Fact 2, 3, 7, and 10. The City of Pinesdale has authority as an incorporated municipality to secure, construct, and operate a water supply system for the use of its city or inhabitants. Mont. Code Ann. Title 7 Chapter 13 (1989). Therefore, the criterion in Mont. Code Ann. § 85-2-311(f) (1989) has been met.

8. The proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved. See Finding of Fact 34. Therefore, the criterion in Mont. Code Ann. § 85-2-311(e) (1989) has been met.

9. There is insufficient substantial credible evidence to conclude that the closed conveyance of water through the power plant system has developed additional water that could be available for appropriation over and above what naturally flowed in Sheafman Creek prior to the installation of the power plant diversion. See Findings of Fact 31 and 32.

10. There is an interconnection between the subsurface water around Applicants' proposed diversion works and the surface water flowing in over the bed of Sheafman Creek. See Findings of Fact 17, 18, 19, 20, and 33. The statutory definition of groundwater in Montana was amended by the 52nd Legislature. The former definition (in effect at the time of filing of this Application) was:

"Groundwater" means any water beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water, and which is not a part of that surface water. Mont. Code Ann. 85-2-102(10) (1989).⁸

The present definition is:

"Groundwater" means any water beneath the ground surface. Mont. Code Ann. 85-2-102(10) (1991).

Deleting the phrase "and which is not a part of that surface water" removed language that was sometimes interpreted to imply there was a separation between groundwater and surface water in the operation of the law. There is no distinction in Montana statutes or case law between surface water and ground water in the operation of that element of the prior appropriation system of water use which is adverse effect. To the contrary, Montana recognizes that the only distinction in the operation of law between groundwater and surface water is our ability to understand the factual circumstances, and that our ability to comprehend the facts is always improving with the development of increasingly sophisticated data collection techniques and with the amount of data collected. See Perkins v. Kramer, 148 Mont. 355, 423 P.2d 587 (1966). Furthermore, and more specific to the facts in this case, the subsurface supply of a stream, flowing through porous soil and rocks constituting the bed of the stream, is as much a part of the stream as is the surface flow and is subject to the same rules. Smith v. Duff, 39 Mont. 382, 102 P. 984 (1909). The underflow of a stream often includes water

⁸ 1989 Mont. Laws, ch. 658, sec. 1.

moving in lateral extensions of the water bearing material in each side of the surface channel. Larson v. Apollonio, 5 Cal.2d 440, 55 P.2d 196 (1936). Therefore, the water resources that will be appropriated by Applicants' proposed diversion works are legally a single water source, and would be subject to call by senior appropriators and subject to the control of any court appointed water commissioner on Sheafman Creek.

11. Unappropriated water does not exist in the source of supply at the proposed point of diversion during most of the proposed period of use. See Findings of Fact 27, 28, 29, and 30. Starting in July, the waters of Sheafman Creek are under constant call. See Finding of Fact 30. All water in Sheafman Creek is dedicated to fulfilling the entitlements under the existing water rights. No amount of water, no matter how small, is available for new appropriations.

The record indicates there are often shortages of water in June. It is inconclusive, however, as to the frequency and dates of the shortages. The evidence in the record is not adequate to determine the amount of volume or flow available to or being diverted by Objectors at any one point of time or point of diversion. Furthermore, the lack of evidence of effort on the part of Objectors to fully assert their seniority in June to obtain water to which they have valid rights raises additional questions about when, how often, and to what extent the alleged shortages have occurred. The record shows that Sheafman Creek has not been under constant call in June. See Finding of Fact 30.

Applicants have provided substantial credible evidence the amount of water proposed for appropriation is physically available at the proposed point of diversion from June 15 to July 1. See Findings of Fact 26 and 28. There is no record of constant calls for water or annually-imposed voluntary rotation schemes during this period, nor is there record of annual stream management by a water commissioner during this period. See Findings of Fact 27 and 30. There being water physically available at times which is not destined to prior appropriators, as to the period of time from June 16 through June 30 the criterion in Mont. Code Ann. § 85-2-311(1) (1989) has been met. See In re Application 70511-s76LJ by Winter Sports, Inc.; see also In re Application 24921-s41E by Remi and Betty Jo Monforton.

12. Applicants have proved by substantial credible evidence that the proposed means of diversion, construction, and operation of the diversion works are adequate. See Findings of Fact 2, 3, 7, 14, 15, 16, and 21. Mont. Code Ann. § 85-2-311(1)(c) (1989) requires this proof which has generally been interpreted to mean an applicant must show that their proposed system can be constructed and operated to divert and deliver the amount of water requested reasonably efficiently and without waste, and to allow control of the amount of water diverted such that it can be regulated in accordance with the system of priority on the source. Applicants have provided substantial credible evidence that the system will be subject to independent and impartial operational controls and measurement. See Finding of Fact 36.

While it is true that plans of the diversion system design were not reviewed by the Department prior to construction, as would normally happen in the course of processing a permit application. Nothing the Hearing Examiner could find in statutes, rules, case law, or Department precedent requires Department supervision of the construction of diversion devices.

Objectors' contention that operation of the diversion and conveyance systems will not be adequate because a permit issued to these Applicants would be impossible to administer (see Findings of Fact 5 and 35) is not within the scope of determining whether Applicants have met the relevant criterion as it does not involve questions of efficiency, prevention of waste, or lack of control devices. Objectors contention goes, rather, to the issue of enforcement because it raises questions about the potential for operation in excess of the limits of the permit. Other than proving the system is capable of controlling the amount of water it diverts, showing that a permit can be enforced is not a criterion for issuance of a permit. The potential to exceed the limits of a water right exists in any system with a capacity larger than the limits of the permit; a very common occurrence, especially when one considers period of use limitations on ditch systems. Nevertheless, the system proposed by Applicants contains elements of control on the operation of the system which facilitate the application of enforcement mechanisms. See Findings of Fact 16 and 36.

Granting permits to Applicants that would have only a two week period of use does not create an administrative anomaly that prevents regulation within the scheme of priority on the source. Applicants have permits for appropriations from Sheafman Creek through these galleries for municipal use in the City of Pinesdale with priority dates identical to the date of filing of these Applications. The period of use of those permits, 69638-s76H and 69659-s76H, ends June 15. See Findings of Fact 2, 3, 6, 7, and 34. Because the period of use of all of these four permits would be coterminous and could be administered as if they were a single appropriation, the proposed appropriation works can be operated within the priority scheme on the source. Therefore, the criterion in Mont. Code Ann. § 85-2-311(c) (1989) has been met.

To ensure that the limits of Applicants' water rights, including the water rights being changed, are not exceeded, all water diverted must be measured. Furthermore, in order for the water commissioner to regulate diversions through this system, the system must measure all water diverted. See Findings of Fact 11 and 30. The existing bypass lines around the gallery system measuring devices allow for unmeasured appropriation. See Finding of Fact 16. The permit must be conditioned to prohibit a system that allows for unmeasured diversion of water. See Mont. Code Ann. § 85-2-312(1) (1989). This can be accomplished by eliminating the bypasses around the gallery measuring devices or

returning the bypass water to the source rather than allowing it to go into the distribution system for use.

13. Applicants have provided substantial credible evidence that the proposed appropriation will not adversely affect prior appropriators of groundwater. The effect, if any, of the proposed appropriation would be immeasurable. See Findings of Fact 22 and 23. As such any such hypothetical effect would not alter the ability of such an appropriator to operate their diversion works to reasonably exercise their water rights. See Mont. Code Ann. § 85-2-401(1) (1989).

14. As to the period from June 15 to July 1, Applicants have provided substantial credible evidence that the proposed appropriation will not adversely affect the water rights of prior appropriators of Sheafman Creek water. See Findings of Fact 18, 19, 20, and 21. Applicants' study and tests did have ambiguities and failings that significantly weaken the ability of the data to support the test results as to the lower portions of Sheafman Creek below the Burke Ditch point of diversion. See Findings of Fact 24 and 25. Nevertheless, the opinion based on the valid aspects of the tests was considered applicable to the lower reaches of the creek through professional extrapolation. See Finding of Fact 21, footnote.

Taking the study's conclusions as stated, there would be an effect but that effect would not be measurable; that is, the proposed appropriations will take surface water, just not enough to be measurable at the other points of diversion downstream.

The study shows there is a relationship between the subsurface water occurrence being intercepted by the infiltration gallery and the down-gradient surface flows in Sheafman Creek. There is an effect on the latter by intercepting the former, but it becomes immeasurable down the creek. The assumption is that an immeasurable effect is an effect that is not adverse. This assumption is correct. Priority of appropriation does not include the right to prevent changes by later appropriators in the condition of water occurrence, such as the decrease of stream flow, if the prior appropriator can reasonably exercise his water right under the changed conditions. Mont. Code Ann. § 85-2-401(1) (1989). An immeasurable change in stream flow is imperceptible and certainly cannot alter the ability of an appropriator to operate his system, and thus cannot diminish his ability to obtain his entitlement. Therefore, as to the period from June 15 to July 1, the criterion in Mont. Code Ann. § 85-2-311(b) (1989) has been met.

15. Statements were made suggesting Applicants' proposed appropriation may be part of a cumulative depletion effect which is ongoing and insidious. Applicants have no burden to disprove potential adverse effects for possible future projects, or to disprove speculative allegations. See In re Application 60117-g76L by William C. Houston; In re Application 70584-g41B by Petersen Livestock.

If Objectors wish to seek answers or solutions to the questions raised concerning possible future or cumulative ef-

fects, the law provides mechanisms for pursuing answers and controls, through Mont. Code Ann. § 85-2-319 or §§ 85-2-506 and 507 (1991).

PROPOSED ORDER

I. Application 74310-s76H
(North Gallery)

Subject to the terms, conditions, and limitations specified below, Application for Beneficial Water Use Permit 74310-s76H is hereby granted to Unified Industries to appropriate 90 gpm up to 5.96 AF of water from June 16 through June 30 of each year from Sheafman Creek for municipal purposes using an existing infiltration gallery in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28, Township 7 North, Range 21 West, Ravalli County, Montana. The place of storage shall be a 13,500 gallon tank in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 28. The place of use shall be in the SW $\frac{1}{4}$ of Section 27, the E $\frac{1}{2}$ and NW $\frac{1}{4}$ of Section 28, the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 33, and the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 34 all in Township 7 North, Range 21 West, Ravalli County, Montana. The priority date shall be 9:00 a.m. October 4, 1988.

This permit is subject to the following conditions:

A. The water right granted by this permit is subject to the authority of court appointed water commissioners, if and when appointed, to admeasure and distribute to the parties using water in the source of supply the water to which they are entitled. The permittee shall pay its proportionate share of the fees and compensation and expenses, as fixed by the court, incurred in the distribution of the waters granted in this provisional permit.

B. This permit is used in conjunction with Permit to Appropriate Water 74311-s76H. The combined appropriation of the two diversions as granted shall not exceed a total of 140 gallons per minute up to 9.28 acre-feet from June 16 through June 30 of each year.

C. This permit is used in conjunction with Certificate of Water Right 4858-g76H which authorizes the certificate holder to divert ground water only. The combined appropriation under Permit 74310-s76H and Certificate 4858-g76H shall not exceed a flow rate of 90 gallons per minute and shall not exceed a volume of 5.86 acre-feet from June 16 through June 30 of each year.

D. This permit is supplemental to seven Statements of Claims to Existing Water Rights (listed below) and Permit to Appropriate Water 74311-s76H which means they are for the same purpose and have overlapping places of use. Whenever supplemental water rights are combined to supply water for municipal use, each is limited to the flow rate and volume of the individual right, and the combined total flow rate and volume shall not exceed the amount necessary for beneficial use.

The Statements of Claims to Existing Water Rights are:

76H-W002106-00	76H-W002689-00
76H-W002654-00	76H-W002691-00
76H-W002659-00	76H-W152102-00
76H-W002683-00	

E. This permit is subject to the condition that the permittee shall install and maintain adequate continuously reading flow measuring devices in order to allow the flow rate and volume of all water diverted to be recorded. The devices must be placed so

that water cannot be diverted without being measured and recorded, as certified by a licensed plumber or engineer. Bypass or pressure relief lines, if necessary, must convey water through an alternative measuring mechanism or to the source. The permittee shall keep a written record of the flow rate and volume of all waters diverted, including the period of time, and shall submit said records on demand and by November 30 of each year to the Missoula Water Resources Regional Office.

F. This permit is subject to all prior and existing water rights, and to any final determination of such rights as provided by Montana Law. Nothing herein shall be construed to authorize appropriations by the permittee to the detriment of any prior appropriator.

G. If, at any time after this permit is issued, a written complaint is received by the Department alleging that diverting from this source is adversely affecting a prior water right, the Department may make a field investigation of the project. If during the field investigation the Department finds sufficient evidence supporting the allegation, it may conduct a hearing in the matter allowing the permittee to show cause why the permit should not be modified or revoked. The Department may then modify or revoke the permit to protect existing water rights or allow the permit to continue unchanged if the hearings officer determines that no existing water rights are being adversely affected.

H. The issuance of this permit by the Department shall not reduce the permittee's liability for damages caused by permittee's exercise of this permit, nor does the Department in issuing the permit in any way acknowledge liability for damage caused by the permittee's exercise of this permit.

I. Upon a change in ownership of all or any portion of this permit, the parties to the transfer shall file with the Department of Natural Resources and Conservation a Water Right Transfer Certificate, Form 608, pursuant to Mont. Code Ann. § 85-2-424 (1991).

II. Application 74311-s76H
(Creek Gallery)

Subject to the terms, conditions, and limitations specified below, Application for Beneficial Water Use Permit 74311-s76H is hereby granted to the City of Pinesdale to appropriate 50 gpm up to 3.31 AF of water from June 16 through June 30 of each year from Sheafman Creek for municipal purposes using an existing infiltration gallery in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28, Township 7 North, Range 21 West, Ravalli County, Montana. The place of storage shall be a 13,500 gallon tank in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 28. The place of use shall be in the SW $\frac{1}{4}$ of Section 27, the E $\frac{1}{2}$ and NW $\frac{1}{4}$ of Section 28, the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 33, and the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 34 all in Township 7 North, Range 21 West, Ravalli County, Montana. The priority date shall be 4:28 p.m. October 14, 1988.

This permit is subject to the following conditions:

A. The water right granted by this permit is subject to the authority of court appointed water commissioners, if and when appointed, to admeasure and distribute to the parties using water in the source of supply the water to which they are entitled. The permittee shall pay its proportionate share of the fees and compensation and expenses, as fixed by the court, incurred in the distribution of the waters granted in this provisional permit.

B. This permit is used in conjunction with Permit to Appropriate Water 74310-s76H. The combined appropriation of the two diversions as granted shall not exceed a total of 140 gallons per minute up to 9.28 acre-feet from June 15 through June 30 of each year.

C. This permit is supplemental to seven Statements of Claims to Existing Water Rights (listed below) and Permit to Appropriate Water 74310-s76H which means they are for the same purpose and have overlapping places of use. Whenever supplemental water rights are combined to supply water for municipal use, each is limited to the flow rate and volume of the individual right, and the combined total flow rate and volume shall not exceed the amount necessary for beneficial use.

The Statements of Claims to Existing Water Rights are:

76H-W002106-00	76H-W002689-00
76H-W002654-00	76H-W002691-00
76H-W002659-00	76H-W152102-00
76H-W002683-00	

D. This permit is subject to the condition that the permittee shall install and maintain adequate continuously reading flow measuring devices in order to allow the flow rate and volume of

all water diverted to be recorded. The devices must be placed so that water cannot be diverted without being measured and recorded. Bypass or pressure relief lines, if necessary, must convey water through an alternative measuring mechanism or to the source. The permittee shall keep a written record of the flow rate and volume of all waters diverted, including the period of time, and shall submit said records on demand and by November 30 of each year to the Missoula Water Resources Regional Office.

E. This permit is subject to all prior and existing water rights, and to any final determination of such rights as provided by Montana Law. Nothing herein shall be construed to authorize appropriations by the permittee to the detriment of any prior appropriator.

F. If, at any time after this permit is issued, a written complaint is received by the Department alleging that diverting from this source is adversely affecting a prior water right, the Department may make a field investigation of the project. If during the field investigation the Department finds sufficient evidence supporting the allegation, it may conduct a hearing in the matter allowing the permittee to show cause why the permit should not be modified or revoked. The Department may then modify or revoke the permit to protect existing water rights or allow the permit to continue unchanged if the hearings officer determines that no existing water rights are being adversely affected.

G. Issuance of this permit shall not reduce the permittee's liability for damages caused by exercise of this permit, nor does the Department, in issuing this permit, acknowledge any liability for damages caused by exercise of this permit, even if such damage is a necessary and unavoidable consequence of the same.

H. Upon a change in ownership of all or any portion of this permit, the parties to the transfer shall file with the Department of Natural Resources and Conservation a Water Right Transfer Certificate, Form 608, pursuant to Mont. Code Ann. § 85-2-424 (1991).


NOTICE

This proposal may be adopted as the Department's final decision unless timely exceptions are filed as described below. Any party adversely affected by this Proposal for Decision may file exceptions with the Hearing Examiner. Defaulted objectors are restricted to excepting to the default ruling. The Department will disregard any exceptions submitted by defaulted objectors on other substantive issues.

Any exceptions must be filed and served upon all parties within 20 days after the proposal is mailed. Parties may file responses to any exception filed by another party within 20 days after service of the exception. However, no new evidence will be considered.

No final decision shall be made until after the expiration of the time period for filing exceptions, and due consideration of timely exceptions, responses, and briefs.

Dated this 17th day of June, 1992.



John E. Stults, Hearing Examiner
Department of Natural Resources
and Conservation
1520 East 6th Avenue
Helena, Montana 59620-2301
(406) 444-6612

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Proposal for Decision was duly served upon all parties of record at their address or addresses this 19th day of June, 1992, as follows:

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